HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
and
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.20111 OF 2007

Between:

P. Papa Rao and two others

.....Petitioners

AND

Department of Mines and Geology,
Government of Andhra Pradesh,
Rep., by its Assistant Director,
Gandipuram – 3, Rajahmundry and
seven others

.....Respondents

::ORDER::

Counsel for the Petitioners : Shri S.R. Sanku

21st September, 2007

Per G.S.Singhvi, CJ

In this petition filed as a piece of public interest litigation, the petitioners have prayed for restraining the respondents from permitting tapping/excavation/quarrying of sand/silt within the prohibited distance of three kilometers up stream and down stream of Sir Arthur Cotton Barrage on the river Godavari in reach No. 9 of Seethampeta Village and reach Nos. 1 and 2 covered by auction notice No.5679/sand/2007, dated 4-9-2007 issued by Assistant Director of Mines and Geology, East Godavari.

In order to establish his own locus and that of petitioner Nos. 2 and 3 to invoke the jurisdiction of this Court by means of probono publico litigation, petitioner No. 1 Shri P. Papa Rao has made the following averments:

> "I submit that I am a structural engineer by profession and I stay nearer to the barrage. The other petitioners are public spirited and they have lot of concern for the barrage. The lis in this writ petition is in the public interest and therefore writ petitioner No. 2 herein also sent a telegraphic representation to the respondent No. 1 and 2 voicing his concern regarding the damage being caused to the barrage due to the excavation of the silty sand. However, the tender process is going on. Hence we crave leave of this Hon'ble Court to entertain this writ petition in the public interest. Greater public interest is involved in this writ petition, because, if the silty sand is excavated/tapped/quarried for commercial purposes in the up stream and down stream of this barrage, its collapse/washing out is imminent. There are so many reaches in the East and West Godavari Districts from which sand or silty sand can be tapped. In fact the present auction notification itself shows that as many as 34 reaches in the East Godavari District itself from which sand can be tapped. Likewise there are many reaches in West Godavari District also. Therefore if tapping of silty sand is stopped within the distance of 3 kilometers in the up stream and down stream of Sir Arthur Cotton Barrage, the State is not going to get any commercial loss. The

stoppage of tapping wold only be beneficial to the Dam. Hence this writ petition."

Shri S.R. Sanku, learned counsel for the petitioners invited the Court's attention to document marked as Ex. P-2, which according to the learned counsel, is evaluation of investigation report of Sir Arthur Cotton Barrage submitted by Special Dam Safety Investigation Team constituted by Chief Engineer, Central Designs Organisation, Hyderabad to substantiate the assertion of his clients that indiscriminate sand quarrying within one kilometer of up stream and down stream from Kovvur side and within three kilometers distance from the barrage has a serious threat to the stability of the barrage and argued that the Court should restrain the authorities of the Mines and Geology Department from granting lease for sand quarrying and removal of silt within three kilometers distance from up stream and down stream of the barrage. Learned counsel emphasized that the petitioners have moved the Court without any ulterior motive and, therefore, the Court should entertain their plea notwithstanding the fact that they have not approached the departmental authorities for taking action in the light of report Ex. P-2.

We have given serious thought to the arguments of the learned counsel, but have not felt persuaded to entertain the prayer made in the petition. The principles which are required to be kept in view by the courts while entertaining writ petitions filed in the name of public interest litigation have been succinctly laid down by the Supreme Court in **Guruvayoor Devaswom Managing Committee v. C.K. Rajan**[1]**.** The same are as under**:**

"(i) The Court in exercise of powers under Article 32 and Article 226 of the Constitution of India can entertain a petition filed by any interested person in the welfare of the people who is in a disadvantaged position and, thus, not in a position to knock the doors of the Court. The Court is constitutionally bound to protect the fundamental rights of such disadvantaged people so as to direct the State to fulfil its constitutional promises.

(ii) Issues of public importance, enforcement of fundamental

rights of a large number of the public vis-vis the constitutional duties and functions of the State, if raised, the Court treats a letter or a telegram as a public interest litigation upon relaxing procedural laws as also the law relating to pleadings.

(iii) Whenever injustice is meted out to a large number of people, the Court will not hesitate in stepping in. Articles 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights provide for reasonable and fair trial.

(iv) The common rule of locus standi is relaxed so as to enable the Court to look into the grievances complained on behalf of the poor, the depraved (sic), the illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right.

(v) When the Court is prima facie satisfied about variation of any constitutional right of a group of people belonging to the disadvantaged category, it may not allow the State or the Government from raising the question as to the maintainability of the petition.

(vi) Although procedural laws apply to PIL cases but the question as to whether the principles of res judicata or principles analogous thereto would apply depends on the nature of the petition as also facts and circumstances of the case.

(vii) The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a public interest litigation."

(viii) However, in an appropriate case, although the petitioner might have moved a court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice.

(ix) The Court in special situations may appoint a Commission, or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution taken over by such Committee."

The petitioners have tried to project themselves as public spirited persons who are greatly concerned with the safety of the barrage, but we have not felt convinced with the bonafides of their litigious venture. If they were really interested in ensuring the safety of the barrage, the petitioners, at least one of whom appears to be a technocrat and one appears to be a law knowing person would have drawn the attention of

the State Government in Mines and Geology Department to the possible threat to the barrage on account of sand quarrying and removal of silt. They could have sent a copy of report Ex. P-2 to the Minister and Secretary of the concerned department or at least to Director, Mines and Geology Department and pleaded for taking of corrective measures. The minimum which they could do was to make a comprehensive representation to the competent authority of the Mines and Geology Department against the proposed auction of the sand quarries. However, the fact of the matter is that without taking the slightest trouble and bringing the matter to the notice of the higher authorities and functionaries of the department, the petitioners rushed to this Court in an apparent bid to gain cheap publicity/popularity.

In our opinion, the petitioners have failed to discharge their primary duty as public spirited persons and, therefore, we are not inclined to entertain their prayer.

In the result, the writ petition is dismissed. However, it is made clear that the petitioners shall be free to represent their cause/grievance to the higher authorities by making appropriate representation. We hope and trust that the concerned authorities will examine the representation/petition, if any, made to them and take appropriate action at the earliest.

As a sequel to dismissal of the main petition, WPMP No. 25945 of 2007 filed by the petitioners for interim relief is also dismissed.

G.S.SINGHVI, C.J.

C.V.NAGARJUNA REDDY, J.

September 21, 2007

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[1] (2003) 7 SCC 546